

MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: NEVADA ADVISORY COMMITTEE

SUBJECT: NEVADA ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is a Nevada Advisory Committee project proposal on *Civil Rights Issues Regarding Municipal Fees and Police Practices in Nevada*. The Nevada Advisory Committee approved this proposal at a meeting of the Committee on December , 2016 by a vote of [] yes, [0] no, [0] abstentions.

Attachments: Project Proposal
Project Proposal Checklist

This project proposal is:

_____ Approved

_____ Disapproved

_____ Returned for revisions according to comments.

Staff Director

Date

A project proposal of the Nevada Advisory Committee to the United States Commission on Civil Rights

Topic: Civil Rights Issues Regarding Municipal Fees and Police Practices in Nevada

Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

The Commission determined that its 2017 Statutory Enforcement Report to the President and Congress shall be on the topic of civil rights implications of municipal fees. In support of this project, the Nevada Advisory Committee intends to examine civil rights and municipal fees in the State of Nevada to see (1) if it is an issue in Nevada, and (2) if it is an issue, to what extent does it disparately impact communities based upon the federally protected categories, if at all. The Committee intends to then continue the investigation into policing practices in Nevada more generally to understand and make recommendations regarding any disparate policing practices that may be occurring.

The U.S. Constitution along with other federal law may protect citizens from government schemes that use policing to raise revenue.¹ These include the following:

- The Due Process Clause of the Fourteenth Amendment² bars criminal adjudication by individuals who have a financial stake in cases they decide.³ In addition, the Due Process Clause “might also forbid combining the executive function of prosecution with the

¹ “Policing and Profit,” Harvard Law Review, 128 Harv. L. Rev. 1723, April 10, 2015.
<http://harvardlawreview.org/2015/04/policing-and-profit/> (hereafter cited as “Policing and Profit”)

² U.S. Const. amend. XIV

³ See *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009).

legislative function of budget management.”⁴ Furthermore, it “might . . . require special scrutiny whenever a financial motive is personal,” among other legal theories.⁵

- The Equal Protection Clause of the Fourteenth Amendment⁶ ensures that no state shall deny any persons “the equal protection of the laws.”
- The Fourth Amendment⁷ protects individuals from unreasonable searches and seizures as well as excessive force.
- The Eighth Amendment⁸ to the U.S. Constitution forbids “excessive fines.”

The Nevada Advisory Committee proposes to study the extent to which these protections, as applied in practice, are sufficient to address current concerns regarding disparate municipal fee schemes and policing practices in communities of color primarily.

Background

In 1981, the Commission issued a seminal report on police practices in America, *Who is Guarding the Guardians?* Twenty years later the Commission issued a follow-up report, *Revisiting Who is Guarding the Guardians?* Both reports raised troubling concerns about insular police practices that undermine equal protection under the law. Over the years, numerous advisory committees also took up the subject of policing. Recently, the Nevada Advisory Committee studied the issue of police militarization in Nevada.

More recently, police shootings and concerns regarding excessive use of force have garnered national attention to patterns of disparate policing practices in marginalized communities. One such incident occurred on Saturday, August 9, 2014, when Michael Brown, an unarmed Black teenager, was shot and killed by Darren Wilson, a White police officer, in Ferguson, MO, a suburb of St. Louis. This tragedy started a national conversation on policing and led to two important reports.

⁴ “Policing and Profit”

⁵ “Policing and Profit”

⁶ U.S. Const. amend. XIV

⁷ U.S. Const. amend. IV

⁸ U.S. Const. amend. VIII

First, the U.S. Department of Justice, Civil Rights Division, released its report entitled, “Investigation of the Ferguson Police Department.”⁹ The report found that Ferguson’s law enforcement efforts were focused on generating revenue to the point that the Civil Rights Division found that the Ferguson Police Department (FPD) “communicated to officers not only that they must focus on bringing in revenue, but that the department has little concern with how officers do this.”¹⁰ As a result, the Civil Rights Division found that officers relied heavily on an allegedly unconstitutional “Failure to Comply” charge and a system of officer-generated arrest orders called “wanted” that circumvents the warrant system.¹¹ These practices also were found to disproportionately impact African Americans.¹²

The Civil Rights Division report also found discriminatory practices with Ferguson’s municipal courts, finding that “the impact of revenue concerns have on court operations undermines the court’s role as a fair and impartial judicial body.”¹³ The report concludes that “Ferguson’s police and municipal court practices disproportionately harm African Americans” and that the harm “stems in part from intentional discrimination in violation of the Constitution.”¹⁴

The second report was created after President Obama signed an Executive Order on December 18, 2014, establishing the Task Force on 21st Century Policing. The Task Force was tasked with “identifying best practices and offering recommendations on how policing practices can promote effective crime reduction while building public trust.” The Task Force received testimony and recommendations from a wide range of stakeholders offering insights into strategies to cultivate community trust while pursuing more effective crime reduction tactics. The task force cites recent instances of police misconduct as well as the expanding responsibilities of police as impetus for change,

As our nation becomes more pluralistic and the scope of law enforcement’s responsibilities expands, the need for expanded and more effective training has become critical. Today’s line officers and leaders must be trained and capable to address a wide variety of challenges including international terrorism, evolving

⁹ “Investigation of the Ferguson Police Department,” https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (hereafter cited as “Investigation of the Ferguson Police Department”)

¹⁰ “Investigation of the Ferguson Police Department,” p. 11.

¹¹ “Investigation of the Ferguson Police Department,” p. 16.

¹² “Investigation of the Ferguson Police Department,” p. 16.

¹³ “Investigation of the Ferguson Police Department,” p. 42.

¹⁴ “Investigation of the Ferguson Police Department,” p. 62.

technologies, rising immigration, changing laws, new cultural mores, and a growing mental health crisis.¹⁵

By May of 2015, the President’s Task Force on 21st Century Policing identified 6 “pillars” that would foster better police and community relations:¹⁶

1. Building Trust and Legitimacy;
2. Policy and Oversight;
3. Technology and Social Media;
4. Community Policing and Crime Reduction;
5. Officer Training and Education; and
6. Officer Safety and Wellness.

In May 2016, the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) launched the Advancing 21st Century Policing Initiative,¹⁷ which provides assessment and technical assistance to law enforcement agencies working towards implementing 21st Century Policing recommendations. In Nevada, Carson City Sheriff’s Office established a new school resource officer (SRO) training partnership with the National Association of School Resource Officers (NASRO) and hosted a training course for local SROs in the spring of 2016. “The SROs will receive additional training from NASRO, and new officers will also receive training to promote safe schools and positive relationships between law enforcement and youth in the community.”¹⁸

Scope

The scope of this project is limited to an examination of (1) municipal fees as it impacts the access to justice and (2) police practices in the State of Nevada. The project shall be undertaken in two parts. The first part shall focus exclusively on municipal fees in support of the

¹⁵ President’s Task Force on 21st Century Policing, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹⁶ President’s Task Force on 21st Century Policing

¹⁷ U.S. Department of Justice, Office of Community Oriented Policing Services, *The President's Task Force on 21st Century Policing: One-Year Progress Report*, 2016.

¹⁸ U.S. Department of Justice, Community Oriented Policing Services, “Task Force Recommendations Implementation Map,” <https://cops.usdoj.gov/Default.asp?Item=2827>.

Commission 2017 Statutory Enforcement Report. The second part will then focus on policing practices in the state. Through public meetings, the Committee will hear testimony on police practices in the state to determine the existence of specific issues, if any, and formulate recommendations for those issues. The Committee will also hear testimony and examine current state and federal legislation related to discrimination on the basis of race or color in the administration of justice to establish recommendations for potential responses to any disparities identified in the examination.

Methodology

This project will include a gathering of data, documents, and opinions to enable the Nevada Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from experts and citizens as well as documentary evidence from such individuals. The Committee proposes to hold one or more public meeting(s). During these public meetings, the Committee will solicit testimony and comments from law enforcement, government officials, community members, and experts on police practices in communities of color in the State of Nevada. This/these meeting(s) may take place in person or via web-conference. The purpose of the meeting(s) is to hear information directly from Nevada residents—particularly those who may be/may have been impacted by municipal fees and police misconduct—as well as law enforcement agents, government officials, scholars, and other experts. The public meeting(s) will be advertised and recorded by a court reporter. The meeting(s) will include time for public comment in which any Nevada resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting(s) in person.

To ensure balance, all members of the bipartisan Committee will participate in drafting the agenda and identifying speakers for the public meeting(s) at which the Committee will hear testimony from Nevada residents as well as scholars, police departments, and other experts.

Anticipated Outcomes

There are two anticipated outcomes of this project. First, the Nevada Advisory Committee will provide the Commission with summary findings and any recommendations based upon its initial inquiry into municipal fees and the access to justice issues in Nevada. This memorandum will be

submitted to the Commission by June 2017. The second anticipated outcome of the project is to advise the Commission of disparities in the administration of justice on the basis of federally protected categories and diverse communities in the area of police practices within the State of Nevada. The Committee proposes to do so by issuing a report to the Commission with its findings and recommendations. This report will be submitted to the Commission in 2018.

DRAFT

Time Frames

Committee and OSD approval of proposal	December 2016
Meeting(s) to set agenda for municipal fees meeting	Jan.-Feb. 2017
Public Meeting in Nevada	March 2017
Completion of municipal fees research	April 2017
Draft memo submitted for legal review and editing	May 2017
Approval of Memo by full committee	June 2017
Meetings to set agenda for police practices meetings(s)	July-Nov. 2017
Public meeting in Nevada	January 2018
Completion of Police Practices research	April 2018
Draft Report submitted for legal review and editing	June 2018
Approval of Report by full committee	July 2018

Anticipated Costs FY 2017

Staff Travel	\$3,000
Meeting room	\$1,000
Transcription services	\$2,500
SAC travel to hearing	\$3,000
TOTAL	\$9,500

Anticipated Costs FY 2018

Staff Travel	\$3,000
Meeting room	\$1,000

Transcription services	\$2,500
SAC travel to hearing	\$3,000
TOTAL	\$9,500

DRAFT

SAC PROJECT PROPOSAL CHECKLIST

State: Nevada

Project Name: Civil Rights Issues Regarding Municipal Fees and Police Practices in Nevada

Section I. Approval of Proposal by SAC

1. Was the report voted on by the SAC by mail, meeting, or a combination? _____
2. If the vote was taken by mail:
What was the date the proposal was mailed:
What was the response due date:
Were follow-up calls made to the non-respondents?
List those who failed to respond:
List any special circumstances that apply to any of the non-respondents:
3. If the vote was taken during a meeting:
Was the proposal mailed to members before the meeting: _____ Yes _____ No
When was the proposal sent? What was the date of the meeting?
Did the SAC review and approve the project proposal (not just the topic)? _____ Yes _____ No
4. What was the vote on the project proposal?

Section II. Approval of Proposal by the Office of the Staff Director (to be completed by OSD)

1. Does the proposal identify actions (by staff and the SAC) that should result in balanced research and testimony? _____ Yes _____ No
2. Does the proposal identify sources to be used to research the topic and do they represent a variety of opinions on the issue? _____ Yes _____ No
3. Are milestones and estimated dates provided? _____ Yes _____ No
4. Is the schedule reasonable given other commitments to the scope of the project? _____ Yes _____ No
5. Is the project within the Commission's jurisdiction? _____ Yes _____ No
6. Is the project budget reasonable given its scope and the availability of funds? _____ Yes _____ No